STATE OF HAWAIʻI
OFFICE OF THE PUBLIC DEFENDER

Testimony of the Office of the Public Defender,
State of Hawai'i to the Senate Committee on Judiciary

March 31, 2022

H.B. No. 2422 HD1: RELATING TO SENTENCING

Chair San Rhoads, Vice-Chair Keohokalole, and Members of the Committee:

The Office of the Public Defender strongly opposes H.B. No. 2422 HD1.

Mandating domestic violence intervention classes, whether a defendant is on probation or not, would create two classes of defendants. Those that have the benefit of resources from the probation office – including support services, referral services, access to interpreter services, and access to basic help like a list of available programs, breakdown of costs and information on financial assistance to help defray costs, assistance with completing application forms, and other assistance. The other class of defendants are those who would have no support system in place to complete classes. Only a probationer can receive services and assistance from the Adult Client Services Branch (ACSB). We are troubled that this would create so many barriers and obstacles for the non-probationers that it would set up defendants for failure.

Furthermore, we are very concerned that a blind mandate fails to take into account the individual needs of a defendant or the family member who petitioned the court for a restraining order or an order for protection. We represent defendants with little to no resources who are houseless and disabled. Many defendants have very limited education who struggle with literacy and English proficiency. We also represent disabled clients who cannot physically attend mandated classes because they have suffered intervening medical issues that make it impossible for them to comply. It is simply not appropriate for every single defendant charged with violating an order for protection to be required to complete domestic violence classes without access to a support agency to provide guidance. It is necessary to point out that, unlike mandated driver's education and substance abuse classes for a conviction of the offense of Operating a Vehicle Under the Influence of an Intoxicant, there is no designated and established centralized agency in charge of providing and monitoring approved classes.

We would like to provide some recent situations where it was untenable for a defendant to complete domestic violence classes:

1. A defendant who suffered an intervening stroke, after he was placed on probation, and it rendered it impossible for him to attend domestic violence classes because of both his mental and his physical limitations.

2. A defendant who was in an intervening accident that placed in him the hospital with irreparable brain damage and in need of long-term residential care in a facility. It rendered it impossible for him to attend mandatory domestic violence classes because of his mental and physical injuries.

3. A defendant with serious health issues and in the early stages of progressive dementia. His health and mental capabilities were in decline and deemed irreversible. He is not able to participate in domestic violence classes and became in need of an appropriate care facility.

This measure would mandate classes in all circumstances and would deny the family court the ability to fashion a sentence tailored to the specific needs of defendants.

We strongly oppose an all or nothing approach to managing cases involving domestic violence or cases involving violations of TROs or Orders for Protection.

Thank you for the opportunity to comment on this measure.

HB-2422-HD-1
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Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support.

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SENATE COMMITTEE ON JUDICIARY
Thirty-First State Legislature
Regular Session of 2022
State of Hawai`i

March 31, 2022

RE: H.B. 2422, H.D. 1; RELATING TO SENTENCING.

Chair Rhoads, Vice-Chair Keohokalole and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **support** of H.B. 2422, H.D. 1.

The purpose of H.B. 2422, H.D. 1, is to address the Supreme Court of Hawaii's decision in *State. v. Agdinaoay*,[1] clarifying that a family court, sentencing an offender under sections 586-4, 586-11 or 709-906 of the Hawaii Revised Statutes ("HRS"), is allowed to order domestic violence intervention ("DVI") with incarceration, regardless of the offender's probationary status.

In *Agdinaoay*, the Supreme Court held that family courts cannot impose DVI as a "standalone" sentencing option under HRS §586-4(e), without also ordering the defendant to probation. Because courts also cannot impose both probation and a prison sentence greater than 180 days for misdemeanor offenses, the Supreme Court therefore vacated the nonconforming sentence in *Agdinaoay* as an illegal sentence. H.B. 2422, H.D. 1 attempts to eliminate any confusion by explicitly codifying the Legislative intent, consistent with the dissenting opinion in *Agdinaoay.* Focusing on the plain language of HRS §586-4, the dissent points out that the statute uses the term "shall", when referencing the ordering of DVI by the court. The dissent also points out that nothing in the statute dictates that DVI can only be ordered when a defendant is sentenced to probation. Furthermore, the dissent in *Agdinaoay* cites multiple sections in HRS §586-4 that

[1] *State v. Agdinaoay*, 500 P.3d 408 (2021).

align with H.B. 2422, H.D. 1, establishing that DVI can be a "standalone" sentencing provision regardless of probationary status.[2]

The Department believes that DVI is an important part of addressing the root causes of domestic violence, as it includes both anger management and domestic violence treatment. H.B. 2422, H.D. 1 clearly lays out the legislative intent, highlighting the importance of DVI, as well as the importance of ensuring that everyone (who is sentenced for an offense that mandates DVI) is actually ordered by the court to complete it.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **supports** the passage of H.B. 2422, H.D. 1. Thank you for the opportunity to testify on this matter.

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[2] Other provisions regarding restraining orders similarly demonstrate the legislature's intent to give judges the authority to impose DVI without a condition of probation. For example, HRS § 586-5 provides that after a hearing the family court can enter a protective order, and that,

> The protective order may include all orders stated in the temporary restraining order and may provide relief, as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including . . . orders to either or both parties to participate in domestic violence intervention.

Similarly, HRS § 586-5.5, in relevant part, states:

> The protective order may include all orders stated in the temporary restraining order and may provide for further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention services. . . . The extended protective order may include . . . order[s] to either or both parties to participate in domestic violence intervention services.